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**STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY**

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IN THE MATTER OF REMEDIAL ACTION BY:)
The Burlington Northern and Santa Fe Railway Company,) **AGREED ORDER**
Washington State Department of Transportation,) **NO. DE 04TCPSR-6034**
) **BNSF OIL PIPELINE SITE**

TO: The Burlington Northern and Santa Fe Railway Company
c/o Mr. Bruce Sheppard
Manager Environmental Remediation
2454 Occidental Avenue South
Seattle, WA 98134

TO: Washington State Department of Transportation
Attn: Mr. Jeff Sawyer
Olympic Region
P.O. Box 47440
Olympia, WA 98504-7440

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I. INTRODUCTION

The mutual objective of the Washington State Department of Ecology (Ecology) and The Burlington Northern and Santa Fe Railway Company (BNSF), and the Washington State Department of Transportation (WSDOT) under this Agreed Order is to provide for remedial investigation, feasibility study, interim action, and preparation of a cleanup action plan at a facility where there has been a release or threatened release of a hazardous substance. The above parties have been identified by Ecology as potentially liable persons (PLPs) for the "BNSF Oil Pipeline" site (Site) and are participating in this Agreed Order without any admission of liability or fact. The activities in this Agreed Order are designed to evaluate the potential total petroleum hydrocarbons (TPH) contamination present at the Site located along East D Street in Tacoma, Washington, and the risks posed to human health and the environment from contamination at the Site. Specifically, this Order requires the above PLPs to conduct a remedial investigation (RI), feasibility study (FS), implement an interim action (IA), and to develop a cleanup action plan (CAP) at the site.

II. JURISDICTION

This Agreed Order ("Order") is issued pursuant to the authority of Revised Code of Washington (RCW) 70.105D.050(1).

III. PARTIES BOUND

This Order shall apply to and be binding upon the Parties to this Order, their successors and assigns. The undersigned representative of each party hereby certifies that he or she is fully authorized to enter into this Order and to execute and legally bind such party to comply with the Order. The PLPs agree to undertake all actions required by the terms and conditions of this Order. No change in ownership or corporate status shall alter the PLP's responsibility under this Order. The PLPs shall provide a copy of this Order to all agents, contractors, and subcontractors retained to perform work required by this Order, and shall ensure that all work undertaken by such agents, contractors, and subcontractors complies with this Order.

IV. DEFINITIONS

Unless otherwise specified, the definitions set forth in chapter 70.105D RCW and chapter 173-340 WAC shall control the meanings of the terms used in this Order.

1. Site: The Site, referred to as the "BNSF Oil Pipeline" is located along East D Street in Tacoma, Washington, in Pierce County. The Site is defined by the extent of contamination caused by the release of a hazardous substance at the Site. Based upon factors currently known to Ecology, the Site is

more particularly described in Exhibit A to this Order, which is a detailed Site diagram. The Site constitutes a Facility under RCW 70.105D.020(4).

2. Parties: Refers to the State of Washington, Department of Ecology (Ecology), The Burlington Northern and Santa Fe Railway Company (BNSF), and the Washington State Department of Transportation (WSDOT).

3. Agreed Order or Order: Refers to this Agreed Order and each of the exhibits to the Order. All exhibits are integral and enforceable parts of this Order, and the terms "Agreed Order" or "Order" shall include all exhibits to the Agreed Order.

V. FINDINGS OF FACT

Ecology makes the following Findings of Fact, without any express or implied admissions of such facts by the PLPs.

1. The BNSF Oil Pipeline is located along East D Street in Tacoma, Washington. During recent excavations, portions of the pipe appear to have become compromised and to have released total petroleum hydrocarbons (TPH) into soils and groundwater in the vicinity of East 19th Street and at other locations. The BNSF Oil Pipeline location and general site vicinity map are shown on Exhibit A. The BNSF Oil Pipeline runs east of and parallel to East D Street in Tacoma, Washington and is located on the property currently owned/operated by the Washington State Department of Transportation, Nichols Trucking, City of Tacoma (East 19th Street and East 18th Street right-of-way), Home Electric, Inc. and Supervalu Holdings, Inc. The land usage in the Site vicinity is all industrial and commercial.

2. The Pipeline is a 6-inch steel pipe that appears to have been installed in the early 1900s, and to have connected historic oil storage tanks located on the property that is now owned by JM Martinac Company with oil storage tanks on the current BNSF Tacoma Rail Yard. The pipeline was owned and operated by BNSF Railway company.

3. The City of Tacoma reported to Ecology regarding tar-like oily globules in the Thea Foss Waterway near outfall number 245 (south of Johnny's Restaurant) during low tides. The City and Ecology conducted a site inspection on December 12, 2002, during low tide and noticed a few tar like oily globules floating on the water and also deposited on the banks. Ecology sampled the floating and deposited oily globules for biomarker analysis.

4. The City of Tacoma installed oil sorbent pom-poms in the manhole number 394 located on East 19th Street to determine whether or not the stormwater line is one of the migration pathways for the contamination observed near outfall number 245. During the pom-pom changes it was noticed a thick tar-

like oily "snakes" were caught in the pom pom indicating that the stormwater system is one of the migration pathways for the contamination into the Thea Foss Waterway.

5. The City of Tacoma slip lined approximately 600 feet of the stormwater line above manhole 394 to stop the product that was getting into the stormwater line through the pipe joints. After the slip lining, the contamination migration was stopped for a small period of time. However, the recent pom pom monitoring at manhole 394 showed that again it has started.

6. On February 23 and 24, 2002, and May 29 and 30, 2002, Ecology contractors identified the pipeline along East D Street and excavated three test pits; in the DOT pond area, between the DOT pond and East 19th Street and close to East 19th Street. Ecology collected soil and product samples from inside and/or outside the pipe for biomarker analysis. During the excavation of test pit TP-1 on the DOT pond area, a white backfill material with pH 13 was encountered.

7. The BNSF contractor, GeoEngineers, also conducted soil investigations on March 23, 24 and April 13, 2002, on the DOT pond area, in the vicinity of East 19th and East 18th Streets. This investigation revealed the presence of contaminated soils with TPH (diesel and oil) on the DOT pond area and on East 19th Street exceeding the MTCA Method A cleanup standards of 2000 mg/kg. Results of diesel and oil concentrations ranged from 2450 mg/kg to 29,000 mg/kg and 2300 mg/kg to 26,800 mg/kg, respectively (Exhibit C).

8. On November 26, 2002, Environmental Associates, Inc. (Mr. John Backus's contractor) conducted a Supplemental soil and groundwater assessment at the Tacoma Fixtures Facility. As a part of this investigation six geoprobe borings (TF-5 through TF-10) were drilled and soil and groundwater samples were collected from these borings. TPH diesel and oil was detected at boring locations TF-5, TF-6, TF-7 and TF-9. The TPH diesel and oil concentrations ranged from 150 mg/kg to 730 mg/kg and 430 mg/kg to 2000 mg/kg, respectively. A groundwater sample collected at TF-7 showed diesel and oil concentrations of 6700 ug/l and 8700 ug/l respectively exceeding the MTCA Method-A cleanup standards of 500 ug/l (Exhibit D).

9. During July and August of 2002, Pacific Industrial Resources (BNSF's contractor) grouted the oil pipeline in place with concrete slurry. During this process a number of pipe access pits were excavated and approximately 2600 gallons of product and water mixture was extracted prior to the pipeline grouting with concrete slurry (Exhibit E). During this investigation it was observed that some of the pipe sections in the vicinity of East 19th Street (between AP 2 and 2A) and in the vicinity of the DOT pond area (at AP 1) were in poor condition due to corrosion. These sections of pipe were removed and the cut off ends were grouted.

10. In addition to the samples from the Thea Foss Waterway, Ecology also collected five split soil samples during the GeoEngineers investigation in the vicinity of East 19th Street and the DOT pond area, from the Tacoma Fixtures underground storage tanks and Supervalu parking lot for biomarker analysis. Results of samples collected from Thea Foss Waterway apparently did not match any of the above samples. Based on chromatograms, it was concluded that there are multiple sources (in the vicinity of East 19th Street) that have contributed to the contamination that is seen in the Thea Foss Waterway. Only one sample collected at test pit 5P-C on the Supervalu parking lot matched the results of biomarker analysis of the product sample collected from the inside of the oil pipeline.

VI. ECOLOGY DETERMINATIONS

1. Each of the PLPs is an "owner or operator," as defined in RCW 70.105D.020(12), of a "facility," as defined in RCW 70.105D.020(4). Each of the PLPs was also an "owner or operator" of the facility at the time of a disposal or release of a hazardous substance into the environment.

2. The petroleum product observed in the pipeline as described above is a "hazardous substance" as defined in RCW 70.105D.020(7). In addition to the pipeline, Ecology believes that there may be other unidentified sources present in the vicinity of East 19th Street. Based upon all factors known to Ecology, a "release" or threatened "release" of a "hazardous substance" as defined in RCW 70.105D.020(20) and RCW 70.105D.020(7), respectively, has occurred at the Site.

3. Based upon credible evidence, Ecology issued potentially liable person status letters identifying The Burlington Northern and Santa Fe Railway Company (BNSF), Supervalu Holdings, Inc., the Washington State Department of Transportation (WSDOT), Home Electric, Inc. and the City of Tacoma on November 19, 2003, September 30, 2003, March 13, 2003, and December 22, 2003, respectively, pursuant to RCW 70.105D.040, RCW 70.105D.020(16), and WAC 173-340-500. After providing for notice and opportunity to comment, extending the comment period and reviewing the comments submitted by BNSF, Supervalu Holdings Inc., WSDOT (no comments were received from WSDOT), Home Electric, Inc. and the City of Tacoma, and concluding that credible evidence supported a finding of potential liability, Ecology issued a determination that BNSF, Supervalu Holdings, Inc., WSDOT, Home Electric, Inc. and the City of Tacoma are each potentially liable person (PLP) under RCW 70.105D.040 and notified BNSF, Supervalu Holdings Inc., WSDOT, Home Electric, Inc. and the City of Tacoma of this determination by letters dated March 7, 2003, December 22, 2003, November 4, 2003, and February 3, 2004, respectively.

4. Pursuant to RCW 70.105D.030(1) and RCW 70.105D.050(1), Ecology may require potentially liable persons to investigate or conduct other remedial actions with respect to the release or threatened release of hazardous substances, whenever it believes such action to be in the public interest.

5. Under WAC 173-340-430(1)(a), an interim action is a remedial action that is technically necessary to reduce a threat to human health or the environment by eliminating or substantially reducing one or more pathways for exposure to a hazardous substance. The threat to the safety of the public and Waters of the State (Thea Foss Waterway) caused by the migration of contaminated groundwater/TPH related product at the Site warrants an interim action consistent with WAC 173-340-430(1)(a).

6. Based on the foregoing facts, Ecology believes the remedial actions required by this Order are in the public interest.

VII. WORK TO BE PERFORMED

Based on the foregoing Facts and Determinations, it is hereby ordered that the PLPs take the following actions and that these actions be conducted in accordance with chapter 173-340 WAC unless otherwise specifically provided for herein.

1. Remedial Investigation/Feasibility Study (RI/FS)

The BNSF Oil Pipeline is one of the sources for the TPH contamination in Site soils and groundwater. However, there may be other unidentified sources present in the vicinity of East 19th Street. Other suspected sources may include underground storage tanks located on the Home Electric property and historic filling in the site area. The extent of soil and groundwater contamination on the site is not known. Two investigations (soils investigation and pipeline closure/grouting) have been conducted in the vicinity of East 19th Street, DOT pond area and Supervalu parking lot. However, there is a lack of information to determine the full nature and extent of both soils and groundwater contamination at this site. The PLPs shall conduct a remedial investigation (RI) and a feasibility study (FS) at the Site in accordance with WAC 173-340, implement an appropriate interim action (IA), develop a CAP and comply with the following requirements:

A. Scope of Work:

(1) Work Plan: BNSF submitted a draft work plan to Ecology that proposes a scope of work to evaluate known environmental concerns along the BNSF Oil Pipeline, including the identification of contaminant source(s) and characterization of the extent of soil and groundwater contamination at the site. The work plan included a sampling and analysis plan (SAP) and a site specific health and safety plan (HASP) for field work, in compliance with WAC 173-340-820 and -810, respectively. The SAP identifies the proposed number of soil test locations and groundwater monitoring locations but does not limit the number of such potential locations, approximates depths of samples and borings (as appropriate), and includes a quality assurance/quality control (QA/QC) plan.

(2) Schedule: The work plan includes a subsequent schedule for the implementation of the work plan including an appropriate interim action, and is attached as Exhibit B to this Agreed Order (Schedule). Ecology reviewed and provided written comments on March 5, 2004. The PLPs shall submit a final work plan that incorporates Ecology's comments within seven (7) calendar days of receipt of Ecology's comments.

The approved final work plan, including performance of appropriate Interim Action, shall be implemented according to the Schedule attached to this Order as Exhibit B.

The PLPs shall submit to Ecology a progress report the first week of each month regarding the progress of RI/FS work until such time as the PLPs submit the Draft Final Cleanup Action Plan to Ecology and Ecology provides its written approval. The monthly progress report shall include work completed to date; problems encountered and how they were resolved, and work scheduled for the subsequent month.

(3) Extension of Schedule: The approved schedule presented in the final work plan is based on the assumption that the weather will cooperate during the investigation. However, if good cause exists for an extension, a timely request for an extension may be granted pursuant to Section VIII.9. Should an additional phase of RI be necessary to characterize the distribution of contaminants in soil and/or groundwater at the site (e.g., based on the information obtained during the remedial investigation and performance of the interim action), a supplemental work plan will be submitted to Ecology for review and approval according to an agreed schedule, including an agreed revised schedule for submission of the resulting RI/FS.

2. Interim Action:

An interim action is a remedial action that is technically necessary to reduce a threat to human health or the environment by eliminating or substantially reducing one or more pathways for exposure to a hazardous substance; or a remedial action that corrects a problem that may become substantially worse or cost substantially more to address if the remedial action is delayed (Chapter 173-340-430(a) and (b) WAC).

The City of Tacoma is scheduled to start the Thea Foss Sediment remediation in July or August of 2004. Since contamination is migrating into the Thea Foss Waterway, through the City storm drain and may also be migrating through other unknown pathways, there is potential for recontamination of sediments if the migration of contamination from this site is not stopped. Hence, according to the approved Schedule attached as Exhibit B, an appropriate interim action proposal to stop migration of contamination into the Thea Foss Waterway through any confirmed pathways shall be submitted to Ecology for its review and approval. The PLPs shall implement the approved interim action according to the approved Schedule.

Examples of interim actions may include the slip lining of the City's stormwater system laterals to stop the hazardous substances or contaminants that are getting into the system and any other appropriate actions deemed necessary to stop the migration of contamination into the Thea Foss Waterway.

VIII. TERMS AND CONDITIONS OF ORDER

1. Public Notices

This Order has been the subject of public notice and comment pursuant to WAC 173-340-600 including any appropriate interim actions that will be implemented as stated above.

2. Remedial Action Costs

The PLPs shall pay to Ecology costs incurred by Ecology pursuant to this Order and consistent with WAC 173-340-550(2). These costs shall include work performed by Ecology or its contractors for, or on, the Site under chapter 70.105D RCW both subsequent to the issuance of this Order and retroactive to January 1, 2002. As of February 29, 2004, Ecology has incurred approximately \$27,000 (both staff time and contract costs) at this site. The PLPs shall pay the quarterly invoices required amount within ninety (90) days of receiving from Ecology an itemized statement of costs that includes a summary of costs incurred, an identification of involved staff, and the amount of time spent by involved staff members on the project. A general description of work performed will be provided upon request. Itemized statements shall be prepared quarterly. Failure to pay Ecology's costs within ninety (90) days of receipt of the itemized statement of costs will result in interest charges pursuant to WAC 173-340-550(4).

3. Designated Project Coordinators

The project coordinator for Ecology is:

Mr. Panjini Balaraju
Department of Ecology
Toxics Cleanup Program
Southwest Regional Office
P.O. Box 47775
Olympia, WA 98504-7775
Telephone: (360) 407-6243
E-mail: pbal461@ecy.wa.gov

The project coordinator for the PLPs is:

Mr. Bruce Sheppard
The Burlington and Santa Fe Railway Company
2454 Occidental Avenue South
Seattle, WA 98134
Telephone: (206) 625-6035

The project coordinator(s) shall be responsible for overseeing the implementation of this Order. To the maximum extent possible, communications between Ecology and the PLPs, and all documents, including reports, approvals, and other correspondence concerning the activities performed pursuant to the terms and conditions of this Order shall be directed through the project coordinator(s). Should Ecology or the PLPs change project coordinator(s), written notification shall be provided to Ecology or the PLPs at least ten (10) calendar days prior to the change.

4. Performance

All work performed pursuant to this Order shall be under the direction and supervision, as necessary, of a professional engineer or hydrogeologist, or equivalent expert, with appropriate training, experience and expertise in hazardous waste site investigation and cleanup. The PLPs project coordinator shall notify Ecology as to the identity of such engineer(s) or hydrogeologist(s), and of any contractors, and subcontractors to be used in carrying out the terms of this Order, in advance of their involvement at the Site. The PLPs project coordinator shall provide a copy of this Order to all agents, contractors and subcontractors retained to perform work required by this Order and shall ensure that all work undertaken by such agents, contractors and subcontractors will be in compliance with this Order.

Except where necessary to abate an emergency situation, the PLPs shall not perform any remedial actions at the Site outside that required by this Order unless Ecology concurs, in writing, with such additional remedial actions.

5. Access

Ecology or any Ecology authorized representative shall have the authority to enter and freely move about the Site at all reasonable times for the purposes of, inter alia; inspecting records, operation logs, and contracts related to the work being performed pursuant to this Order; reviewing the progress in carrying out the terms of this Order; conducting such tests or collecting samples as Ecology or the project coordinator may deem necessary; using a camera, sound recording, or other documentary type equipment to record work done pursuant to this Order; and verifying the data submitted to Ecology by the PLPs, provided, however, that any access to BNSF operating property (e.g., Tacoma Rail Yard), shall be conditioned on the accessing party's (i.e., Ecology or any Ecology authorized representative) compliance with railroad safety and insurance requirements. By signing this Agreed Order, the PLPs agree that this Order constitutes reasonable notice of access, and agree to allow access to the Site at all reasonable times for purposes of overseeing work performed under this Order. Ecology shall allow split or replicate samples to be taken by the PLPs during an inspection unless doing so interferes with Ecology's sampling. The PLPs

shall allow split or replicate samples to be taken by Ecology and shall provide seven (7) days notice before any sampling activity.

6. Public Participation

The PLPs shall prepare and/or update a public participation plan for the Site. Ecology shall maintain the responsibility for public participation at the Site.

The PLPs shall help coordinate and implement public participation for the Site.

7. Retention of Records

The PLPs shall preserve in a readily retrievable fashion, during the pendency of this Order and for ten (10) years from the date of completion of the work performed pursuant to this Order, all records, reports, documents, and underlying data in its possession relevant to this Order. Should any portion of the work performed hereunder be undertaken through contractors or agents of the PLPs, then the PLPs agree to include in the contract with such contractors or agents a record retention requirement meeting the terms of this paragraph.

8. Dispute Resolution

A. In the event a dispute arises as to an approval, disapproval, proposed change, or other decision or action by Ecology's project coordinator, the Parties shall utilize the dispute resolution procedure set forth below.

(1) Upon receipt of the Ecology project coordinator's decision, the PLPs have fourteen (14) days within which to notify Ecology's project coordinator of its objection to the decision.

(2) The Parties' project coordinators shall then confer in an effort to resolve the dispute. If the project coordinators cannot resolve the dispute within fourteen (14) days, Ecology's project coordinator shall issue a written decision.

(3) The PLPs may then request Ecology management review of the decision. This request shall be submitted in writing to the Southwest Region Toxics Cleanup Section Manager within seven (7) days of receipt of Ecology's project coordinator's decision.

(4) The Section Manager shall conduct a review of the dispute and shall issue a written decision regarding the dispute within thirty (30) days of the PLP's request for review. The Section Manager's decision shall be Ecology's final decision on the disputed matter.

B. The Parties agree to only utilize the dispute resolution process in good faith and agree to expedite, to the extent possible, the dispute resolution process whenever it is used.

C. Implementation of these dispute resolution procedures shall not provide a basis for

delay of any activities required in this Order, unless Ecology agrees in writing to a schedule extension.

9. Extension of Schedule

A. An extension of schedule shall be granted only when a request for an extension is submitted in a timely fashion, generally at least 15 days prior to expiration of the deadline for which the extension is requested, and good cause exists for granting the extension. All extensions shall be requested in writing. The request shall specify the reason(s) the extension is needed. A requested extension shall not be effective until approved by Ecology. Ecology shall act upon any written request for extension in a timely fashion. An extension shall only be granted for such period of time as Ecology determines is reasonable under the circumstances. Ecology shall give the PLPs written notification in a timely fashion of any extensions granted pursuant to this Order.

B. The burden shall be on the PLPs to demonstrate to the satisfaction of Ecology that the request for such extension has been submitted in a timely fashion and that good cause exists for granting the extension. Good cause includes, but is not limited to:

- (1) Circumstances beyond the reasonable control and despite the due diligence of the PLPs including delays caused by unrelated third parties or Ecology, such as (but not limited to) delays by Ecology in reviewing, approving, or modifying documents submitted by the PLPs; or
- (2) Acts of God, including fire, flood, blizzard, extreme temperatures, storm, or other unavoidable casualty; or
- (3) Endangerment as described in Section VIII.10 of this Order.

However, neither increased costs of performance of the terms of this Order nor changed economic circumstances shall be considered circumstances beyond the reasonable control of the PLPs.

10. Endangerment

In the event Ecology determines that any activity being performed at the Site is creating or has the potential to create a danger to human health or the environment on or surrounding the Site, Ecology may direct the PLPs to cease such activities for such period of time as it deems necessary to abate the danger. The PLPs shall immediately comply with such direction.

If, for any reason, the PLPs determine that any activity being performed at the Site is creating or has the potential to create a danger to human health or the environment, the PLPs may cease such activities. The PLPs shall notify Ecology's project coordinator as soon as possible, but no later than twenty-four (24) hours after making such determination or ceasing such activities. Upon Ecology's direction the PLPs shall provide Ecology with documentation of the basis for the determination or cessation of such activities. If Ecology disagrees with the PLP's cessation of activities, it may direct the PLPs to resume such

activities.

If Ecology concurs with or orders a work stoppage pursuant to this section, the PLPs' obligations with respect to the ceased activities shall be suspended until Ecology determines the danger is abated, and the time for performance of such activities, as well as the time for any other work dependent upon such activities, shall be extended for such period of time as Ecology determines is reasonable under the circumstances.

11. Reservation of Rights/No Settlement

This Agreed Order is not a settlement under chapter 70.105D RCW. Ecology's signature on this Order in no way constitutes a covenant not to sue or a compromise of any Ecology rights or authority. Ecology will not, however, bring an action against the PLPs to recover remedial action costs paid to and received by Ecology under this Order. In addition, Ecology will not take additional enforcement actions against the PLPs regarding remedial actions required by this Order, provided the PLPs comply with this Order.

Ecology reserves the right; however, to require additional remedial actions at the Site should it deem such actions necessary. Ecology also reserves all rights regarding the injury to, destruction of, or loss of natural resources resulting from the release or threatened release of hazardous substances at the Site.

The PLPs expressly reserve all rights provided by law. Nothing in this Order shall be construed as an admission of liability or fact or a waiver of any rights on the part of the PLPs provided by law.

12. Transference of Property

No voluntary conveyance or relinquishment of title, easement, leasehold, or other interest in any portion of the Site shall be consummated by the PLPs without provision for continued implementation of all requirements of this Order and implementation of any remedial actions found to be necessary as a result of this Order.

Prior to transfer of any legal or equitable interest the PLPs may have in the Site or any portions thereof, the PLPs shall serve a copy of this Order upon any prospective purchaser, lessee, transferee, assignee, or other successor in such interest. At least thirty (30) days prior to finalization of any transfer, the PLPs shall notify Ecology of said transfer.

13. Compliance with Applicable Laws

A. All actions carried out by the PLPs pursuant to this Order shall be done in accordance with all applicable federal, state, and local requirements, including requirements to obtain necessary permits, except as provided in subparagraph B of this section.

B. Pursuant to RCW 70.105D.090(1), the substantive requirements of chapters 70.94, 70.95, 70.105, 75.20, 90.48, and 90.58 RCW and of any laws requiring or authorizing local government

permits or approvals for remedial action under this Order that are known to be applicable at the time of issuance of the Order are binding and enforceable requirements of the Order.

The PLPs have a continuing obligation to determine whether additional permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial action under this Order. In the event either Ecology or the PLPs determine that additional permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial action under this Order, it shall promptly notify the other party of this determination. Ecology shall determine whether Ecology or the PLPs shall be responsible to contact the appropriate state and/or local agencies. If Ecology so requires, the PLPs shall promptly consult with the appropriate state and/or local agencies and provide Ecology with written documentation from those agencies of the substantive requirements those agencies believe are applicable to the remedial action. Ecology shall make the final determination on the additional substantive requirements that must be met by the PLPs and on how the PLPs must meet those requirements. Ecology shall inform the PLPs in writing of these requirements. Once established by Ecology, the additional requirements shall be enforceable requirements of this Order. The PLPs shall not begin or continue the remedial action potentially subject to the additional requirements until Ecology makes its final determination.

Ecology shall ensure that notice and opportunity for comment is provided to the public and appropriate agencies prior to establishing the substantive requirements under this section.

C. Pursuant to RCW 70.105D.090(2), in the event Ecology determines that the exemption from complying with the procedural requirements of the laws referenced in RCW 70.105D.090(1) would result in the loss of approval from a federal agency which is necessary for the state to administer any federal law, the exemption shall not apply and the PLPs shall comply with both the procedural and substantive requirements of the laws referenced in RCW 70.105D.090(1), including any requirements to obtain permits.

IX. SATISFACTION OF THIS ORDER

The provisions of this Order shall be deemed satisfied upon the PLP's receipt of written notification from Ecology that the PLPs have completed the remedial activity required by this Order, as amended by any modifications, and that all other provisions of this Agreed Order have been complied with.

X. ENFORCEMENT

Pursuant to RCW 70.105D.050, this Order may be enforced as follows:

1. The Attorney General may bring an action to enforce this Order in a state or federal court.

2. The Attorney General may seek, by filing an action, if necessary, to recover amounts spent by Ecology for investigative and remedial actions and orders related to the Site.

3. In the event the PLPs refuse, without sufficient cause, to comply with any term of this Order, the PLP's will be liable for:

A. Up to three times the amount of any costs incurred by the state of Washington as a result of its refusal to comply; and

B. Civil penalties of up to \$25,000 per day for each day it refuses to comply.

4. This Order is not appealable to the Washington Pollution Control Hearings Board. This Order may be reviewed only as provided under RCW 70.105D.060.

Effective date of this Order: June 22, 2004

The Burlington Northern and Santa Fe
Railway Company

By Mark Stehly

Date March 25, 2004

Mark Stehly

Washington State Department of
Transportation

By _____

Date

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

By Rebecca S. Lawson

Date 4/27/04

Rebecca S. Lawson, P.E.,
Manager
Toxics Cleanup Program
Southwest Regional Office

APPROVED AS TO FORM

PLM
SENIOR GENERAL ATTORNEY

REFERENCES

1. GeoEngineers; draft Report, "D" Street Pipeline Alignment Subsurface Investigation, Tacoma, Washington, May 31, 2002
2. GeoEngineers; Summary Report, "D" Street Pipeline Closure, Tacoma, Washington, January 9, 2003
3. Environmental Associates, Inc., Supplemental Soil and Groundwater Assessment, Tacoma Fixtures 1815 East "D" Street, Tacoma, Washington, January 6, 2003